



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No. : 09/657,181 Confirmation No. 1907
Applicant : Scott A. Moskowitz
Filed : September 7, 2000
TC/A.U. : 2857
Examiner : Carol S. W. TSAI

Docket No. : 80408.0012

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

AMENDMENT & RESPONSE TO OFFICE ACTION UNDER 37
C.F.R. § 1.111

Sir:

In response to the Office Action, dated May 11, 2007, Applicants submit the following amendment and response for consideration:

1) Rejections under Double Patenting

§ 101 Rejections based on a judicially created doctrine of provisional obviousness-type double-patenting

Applicants respectfully traverse the Office's contention that the instant invention's Claim 1 (and all claims depending therefrom), 8, 13 & 21 is not patently distinct from co-pending Application No. 10/805,484 Claim 1. While Applicants may disagree with the premise of the rejection in lieu of a terminal disclaimer Applicants filed Express Abandonment under 37 C.F.R. § 1.138 for US Patent Application No. 10/805,484 on July 30, 2007. A copy is appended herein with this Response. On August 3, 2007, a copy of the communications regarding the Express Abandonment of U.S. Patent Application No. 10/805,484 was provided by facsimile transmission to the Office for consideration and entry into the instant application's file. To the best of the Applicants' understanding this makes the provisional obviousness-type double-patenting rejection moot. Applicants seek clarification from the Office on this understanding.

Additional Comments

In the interests and duty of candor, Applicants respectfully request the Examiner to consider the File Wrapper for U.S. Patent Application No. 10/805,484. Second, it is respectfully requested the File Wrapper be made part of the instant Application's file. Applicants have included a "Certified Patent File Wrapper" for the Examiner's convenience. It is a CD-ROM numbered 0007080511/1 and dated August 2, 2007 produced by the USPTO. Third, Applicants have provided express notice to the Examiner and Supervisory Examiner in the 10/805,484 regarding same (by facsimile communication August 3, 2007) including a copy of the Express Abandonment.

2) Rejections under 35 U.S.C. § 112 first paragraph

Claim 24

Applicants respectfully traverse the rejection of Dependent Claim 24 (and all claims depending therefrom) under 35 USC § 112 1st paragraph as allegedly "failing to comply with the enablement requirement" (May 11, 2007 non-final Office Action at Page 3). Applicants affirm one of ordinary skill in the art would understand the claims and specification as originally filed. Nevertheless, Claim 24 has been cancelled without prejudice or disclaimer thus the 112 rejection is moot.